

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

PAUL PITTS, Individually And On
Behalf of ROSIE LEE PITTS

PLAINTIFF

vs.

No. 3:05CV4-D-A

HOLLY SPRINGS HEALTH CENTER
ASSOCIATION, INC. d/b/a HOLLY SPRINGS
NURSING AND REHABILITATION; et al.

DEFENDANTS

ORDER DENYING MOTION TO DISMISS

Presently before the court is the Defendant Arlene Dawson's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Upon due consideration, the court finds that the motion should be denied.

In connection with the motion, the Defendant has submitted matters outside the pleadings. The court may consider such evidence in evaluating a motion to dismiss, but in doing so must treat the motion as one for the entry of summary judgment. See Fed. R. Civ. P. 12(b). The court declines to do so here because the parties have not yet had adequate time for discovery, and it is generally inappropriate for the court to take up a motion for summary judgment before the completion of discovery. See Gunaca v. State of Texas, 65 F.3d 467, 469 (5th Cir. 1995) ("Rule 56 mandates the entry of summary judgment, after adequate time for discovery . . ."); Willis v. Rouche Biomedical Labs., Inc., 61 F.3d 313, 315 (5th Cir. 1995) (noting entry of summary judgment appropriate "after adequate time for discovery").

As such, the court shall, at the present juncture, exclude all matters outside the pleadings, and treat the Defendant's motion strictly as one to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. And, considering only the pleadings in this action, and taking the facts alleged

in the Plaintiff's complaint as true, the court finds that the Defendant has failed to show that "it appears certain that the plaintiff cannot prove any set of facts that would entitle [him] to the relief [he] seeks." See C.C. Port, Ltd. v. Davis-Penn Mortgage Co., 61 F.3d 288, 289 (5th Cir. 1999). As such, the Defendant's motion to dismiss shall be denied.

THEREFORE, it is hereby ORDERED that the Defendant Arlene Dawson's motion to dismiss (docket entry 7) is DENIED.

SO ORDERED, this the 5th day of August 2005.

/s/ Glen H. Davidson
Chief Judge